

ST 96-18
Tax Type: SALES TAX
Issue: Books & Records Insufficient

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

)	No.	
v.)	IBT #	
)	NTL #	
TAXPAYER,)		
)	Daniel D. Mangiamele	
)	Admin. Law Judge	
Taxpayer)		

RECOMMENDATION FOR DISPOSITION

Appearances: WITNESS, for TAXPAYER; Richard Rohner, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter comes on for rehearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on December 12, 1991, as a result of an audit indicating unreported receipts and disallowed deductions. At issue is whether the taxpayer introduced sufficient documentation to overcome the Department's *prima facie* case. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

1. The Departments *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the amount of \$114,184.00. Dept. Ex. No. 1, 2; Tr. p. 7

2. Sales deductions for gasahol, food, drug, newspapers and magazines were disallowed for January 1988 thru November 1989. Tr. p. 80
3. Taxpayer maintained no documentation to substantiate the motor fuel deduction during 1988 and 1989 except for PST payments made to their supplier. Tr. pp. 26, 27
4. The Department allowed gasahol deductions for the period January 1990 thru June 1991 because taxpayer had proper documentation. Tr. pp. 80, 81
5. Taxpayer's sales tax returns were lower than his federal tax returns. Tr. pp. 82, 84
6. COMPANY is operating and doing business as TAXPAYER. Tr. p. 10
7. Taxpayer operates a gas station and a mini mart. Tr. p. 15
8. Taxpayer's gas station operated with two pumps during 1988, through June 1990. Tr. p. 17
9. After June 1990 taxpayer operated the gas station with four new electric pumps. Tr. p. 17
10. From 1986 to the end of 1989 taxpayer purchased gas from COMPANY-2. Tr. p. 18
11. Taxpayer paid COMPANY-2 when gas was purchased and received a PST at the end of the month indicating prepaid some sales tax. Tr. p. 18
12. After COMPANY-2 went out of business, taxpayer bought gas from COMPANY-3 and prepaid some sales tax and received PST statements at the end of each month. Tr. p. 21
13. Taxpayer was unable to take reading of gallonage off old gas pumps. Tr. p. 24
14. Taxpayer did not have cash register tapes for total audit period. Tr. p. 26
15. Taxpayer measured his gas tanks each night prior to the installation of his new electric tanks. Tr. p. 27
16. Taxpayer gave his accountant his PST, logs and measurements of gas sold for purposes of preparing sales tax returns. Tr. pp. 27, 28

Conclusions of Law:

On examination of the record established, this taxpayer has partially demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to reduce the tax liability contained in the Department's *prima facie* case under the assessment in question.

The Department of Revenue auditor disallowed deductions for gasahol, food, drug, newspapers and magazines for the audit period where taxpayer did not have proper underlying documentation.

In general, a taxpayer must maintain and keep records in order to support the deductions claimed.

35 ILCS 12/7 provides as follows:

Sec. 7. Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents. Every person who is engaged in the business of selling tangible personal property at retail in this State and who, in connection with such business, also engages in other activities (including but not limited to, engaging in a service occupation) shall keep such additional records and books of all such activities as will accurately reflect the character and scope of such activities and the amount of receipts realized therefrom.

All books and records and other papers and documents which are required by this Act to be kept shall be kept in the American language and shall, at all time during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

To support deductions made on the tax return form, or authorized under this Act, on account of receipts from isolated or occasional sales of tangible personal property, on account of receipts from sale of tangible personal property for resale, on account of receipts from sales to governmental bodies or other exempted types of purchasers, on account of receipts from sales of tangible personal property in interstate commerce, and on account of receipts from any other kind of transaction that is not taxable under this Act, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the transaction, the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the nontaxable character of such transaction under this Act.

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax hereunder, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the

taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable hereunder...(Emphasis Added)

Based on the evidence contained herein, I find taxpayer has failed to comply completely with section 7 by not having the proper underlying documentation to substantiate all the deductions taken. The Department auditor gave taxpayer credit for part of the audit period where records were maintained. Taxpayer admitted they did not keep records of gas sales and their only records of such sales are from PST receipts which were unacceptable to the Department auditor without underlying documentation. I find that the PST receipt records are sufficient evidence of gasohol gallons purchased. Additionally, taxpayer should be allowed credit for the Illinois Motor Fuel Tax on the allowed gasohol gallonage.

I find the remaining arguments of taxpayer insufficient to further rebut the remaining portion of the Departments *prima facie* case since they produced no further documentation to support their arguments.

Accordingly, by such failure of the taxpayer the remaining sales tax liability should stand as a matter of law.

Mere argument without some documentary evidence to substantiate the taxpayer's claim that the *prima facie* case was prepared incorrectly is not sufficient. Quincy Trading Post v. Department of Revenue, 12 Ill. App. 3d 725 (4th Dist. 1973). Taxpayer clearly did not provide sufficient evidence to overcome the remaining portion of Department's *prima facie* case.

On the foundation of the foregoing findings of fact and conclusions of law, it is therefore recommended that the Correction of Returns be revised to reflect gasohol sales, gallonage, and the Illinois Motor Fuel tax for the gasohol gallonage sold plus penalties and interest to date.

Administrative Law Judge